

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

SNOHOMISH COUNTY-CAMANO BOARD  
OF REALTORS,

Appellant,

v.

PUGET SOUND AIR POLLUTION CONTROL  
AGENCY,

Respondent.

PCHB No. 89-159

ORDER OF DISMISSAL

On December 12, 1989 the Snohomish County-Camano Board of Realtors ("Realtors") filed an appeal with the Pollution Control Hearings Board ("PCHB") contesting the Puget Sound Air Pollution Control Agency's ("PSAPCA") amendment of Section 8.02(b) and (c) of Regulation I (Delineation of No Burn Zone).

On December 22, 1989, the PCHB set a schedule for filings on whether this Board had jurisdiction to hear this appeal.

The Board has considered the following in reaching its decision.

1. The appeal;
2. PSAPCA's letter filed December 22, 1989;

3. Realtors' letter filed January 8, 1990;

4. PSAPCA Motion and Affidavit in Support of Dismissal filed January 8, 1990;

5. Realtors' (2) letters filed January 18, 1990;

6. PSAPCA's (2) Memorandum of Authorities filed January 19, 1990; and

7. Realtors' letter filed January 29, 1990.

From the foregoing, the Board concludes:

# I

The Pollution Control Hearings Board is a quasi-judicial entity whose jurisdiction is governed by statute. Chapter 43.21B RCW governs. The Board has only those powers expressly granted or necessarily implied. Seattle v. Department of Ecology, 37 Wn. App. 819, 683 P.2d 244 (1984).

## II

RCW 43.21B.110(1) specifies this Board's jurisdiction. We conclude, as further explained below, that nothing in that section provides authority for appellant's proposition that the Board has jurisdiction to hear facial challenges to the air authority's adoption of a regulation.

To the contrary, subsection 1(a) of RCW 43.21B.110 provides for hearing appeals on the issuance of civil penalties. This appeal is clearly not a civil penalty case. Subsection 1(b) deals with appeals

1 of orders issued pursuant to the Clean Air Act, Chapt. 70.94 RCW at  
2 .211 and .322. These sections of the Clean Air Act deal with orders  
3 issued for violating the Act, which is not the issue in this case.  
4 Subsection 1(c) provides for appeals of the issuance, modification or  
5 termination of any permit, certificate or license by the Department of  
6 Ecology or any air authority. Clearly the adoption of a regulation is  
7 not a permit, certificate or license.

8 RCW 43.21B.110 at Subsection 1(e) provides jurisdiction to this  
9 Board over any other decision by an air authority which must be  
10 decided as an adjudicative proceeding under Chapt. 34.05 RCW (the  
11 Administrative Procedure Act ("APA").) The APA clearly distinguishes  
12 between rule-making procedures (Part III), and adjudicative  
13 proceedings (Part IV).

14 An "adjudicative proceeding" is defined at RCW 34.05.010 in  
15 relevant part to require the entry of an order by the agency. An  
16 "order" is defined at RCW 34.05.010

17 (10)(a): a written statement of particular applicability  
18 that finally determines the legal rights, duties,  
19 specific person or persons. [Emphasis added.]

20 In contrast a "rule" means any agency order, directive, or regulation  
21 of general applicability. RCW 34.05.010(15).

22 Clearly PSAPCA's adoption of an amendment to Section 8.02(b) and  
23 (c) of Regulation I is rule making (RCW 34.05.110(17)), and is not an  
24

1 adjudicative proceeding under the APA as referenced in RCW  
2 43.21B.110(1)(e).  
3

4 III

5 There has been presented no convincing legal argument that the  
6 Board has necessarily implied jurisdiction to hear a facial challenge  
7 to PSAPCA's regulation. To the contrary, such challenge properly  
8 belongs in a different arena, Superior Court.

9 IV

10 Because we reach this conclusion, we need not and do not address  
11 respondent PSAPCA's argument about timely service of the appeal.

12 ORDER

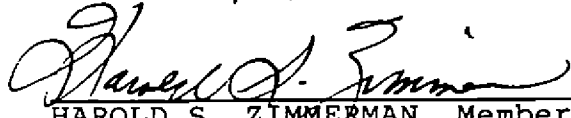
13 This appeal is DISMISSED.

14 DONE this 16<sup>th</sup> day of February, 1990.

15 POLLUTION CONTROL HEARINGS BOARD

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17 JUDITH A. BENDOR, Chair

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19 WICK DUFFORD, Member

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21 HAROLD S. ZIMMERMAN, Member  
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